IN THE SUPREME COURT OF THE UNITED STATES

October Term 1975

No. 75-877

JULIO ALONSO,

Petitioner,

vs.

STATE OF CALIFORNIA DEPARTMENT OF HUMAN RESOURCES AND STATE OF CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

The Petitioner Julio Alonso respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of California entered on September 24, 1975.

OPINION BELOW

The opinion of the Court of Appeal for the Second Appellate District of the State of California appears in the Appendix hereto. No opinion was rendered by the Supreme Court of California.

JURISDICTION

The decision of the Supreme Court of California denying the Petitioner's Petition for Hearing was entered on September 24, 1975. This Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec.1257(3).

QUESTIONS PRESENTED

1. Whether, in view of the fact that there is no valid law either federal or state prohibiting the hiring of an undocumented alien, the Petitioner in applying for Unemployment Insurance benefits met all the eligibility requirements imposed by Section 1253(c) of the Unemployment Insurance Code of California.

2. Whether the Federal Government has preempted the field of immigration law enforcement.

3. Whether the respondents have the authority to create policies that affect the civil, legal, human and economic rights of individuals that go beyond the specific language, requirements, and legislative intent of existing statutes to the detriment of the traditional tri-separation of powers.

4. Whether the respondents acted unconstitutionally in suspending "equal protection of the law" and "due process" in determining the Petitioner's claim for benefits.

5. Whether the action of the respondents in requiring a certain segment of California applicants for unemployment insurance benefits, as a prerequisite for such benefits, to present documentation or otherwise explain their immigration status, while not requiring others to do so is unconstitutional.

STATUTORY PROVISIONS INVOLVED

California Unemployment Insurance Code Section 1253(c):

> "An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that he was able to work and available for work that week."

California Unemployment Insurance Code Section 100:

> "The legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum."

STATEMENT OF THE CASE

This case eminates from an appeal by Petitioner from a judgment entered by the Superior Court of the County of Los Angeles, State of California, denying Petitioner's Petition for a Writ of Mandate and Judicial Review.

The Petitioner was an applicant applying to the respondents, State of California Department of Human Resources Development and Unemployment Insurance Appeals for unemployment insurance benefits. The Petitioner made his application for benefits and was denied said benefits on the basis that he was "unavailable for work." The Petitioner met the established

legal criterion of "available for work" and had established a valid fund as a result of past employment. However, the Petitioner was classified and categorized as "unavailable for work" and denied benefits solely on the basis of his refusal to show his "immigration card" to agents and employees of the Department of Human Resources Development, as hereinafter explained.

In making his application to the respondents, the Petitioner stated that he was unemployed, but, was ready, willing and able to accept employment. The Petitioner did not qualify his willingness to accept employment, nor did he impose any special conditions. On or about September 24, 1972, at the Department of Human Resources Development office in Los Angeles, California, the Petitioner, as a prerequisite to qualifying for benefits, was asked by the respondents to present his immigration "green card." The respondents represented to the Petitioner that he could not qualify for benefits unless he presented his Immigration Card. The Petitioner represented to the respondents that he had lost his "immigration card," but gave the respondents his alien registration number A 11-948-056.

The Petitioner was denied benefits on the basis of not being "available for work" as a result of not presenting his immigration card. The Petitioner therefore requested a hearing with the Unemployment Insurance Appeals Board.

On or about November 16, 1973, a hearing was held by the respondents for the purposes of

determining whether or not the Petitioner was entitled to unemployment insurance benefits. At the hearing the respondents asked the Petitioner to present documentation to show that he was a legal resident as a prerequisite to being classified as "available for work." The Petitioner refused to present any documentation on the basis that he had already complied with the requirements of the Department of Immigration and Naturalization in becoming a permanent legal resident and that he already met the established criterion and definition of "available for work," pursuant to Section 1253(c), Article 1, of the Unemployment Insurance Code, and that the information requested was therefore irrelevant. The hearing referee in decision Number LA-18890 denied his claim for benefits on the basis that he was "available for work."

The Petitioner, subsequent to the referee's decision, made a timely appeal to the respondent Unemployment Insurance Appeals Board. On or about June 5, 1973, the respondents issued a decision upholding the referee's decision by a three to two majority in Precedent Benefits Decision Number PB 153, case Number 72-8624. The Appeals Board cited in its reasons for its decision that the failure or refusal of the claimant to present documentary evidence of his immigration status made him "unavailable for work" pursuant to subdivision (c) of Section 1253 of the Unemployment Insurance Code. The majority also cited public policy as a basis for their decision and held that the Petitioner was not entitled to "due process" nor "equal protection

of the law."

The dissenting members of the Board in their dissenting opinion on page 2, paragraph 3 of the Board's decision, summarize the evidence as follows:

> "There is no evidence in this case and the majority opinion bases no finding that the claimant has imposed any restrictions as suitable work as to hours, days, shifts or wages, nor does it appear that he has restricted the kinds of work he will accept or the distance he will travel in order to accept work. His is in the same labor market area as he was at the time he earned his wage credits upon which his present claims for benefits is founded. If employers are reluctant to hire persons who are unwilling or unable to produce a registration card, the evidence does not show it. In other words, the claimant meets an established definition of availability in that he is ready, willing, and able to accept suitable employment in a labor market and has imposed no restrictions on suitable work which would reduce his possibilities of obtaining employment. Thus, there is no basis in the record for a denial of benefits 'under subdivision (c) of Section 1253 of the Code.'"

As a result of the respondents' denial of his appeal the Petitioner filed a Petition for Writ of Mandate, with the Superior Court for the County of Los Angeles, seeking Judicial Review of the respondents' final administrative decision. The Superior Court upheld the decision of the Appeals Board and denied the relief sought by the Petitioner.

Subsequent to the Superior Court's decision, the Petitioner filed an appeal with the Court of Appeal for the Second Appellate District of California. The Court of Appeal, in a 2 to 1 decision affirmed the decision of the Superior Court on the grounds that: (1) the Petitioner was unavailable for work pursuant to Section 1253(c), (2) that the federal government had not preempted the field of immigration law enforcement with regard to Petitioner's claim for benefits, (3) that public policy was a major consideration.

The Petitioner petitioned the Supreme Court of California for a rehearing of his case but said request was denied. The Supreme Court rendered no opinion in its decision of denial.

REASONS FOR GRANTING THE WRIT

I

THE PETITIONER, IN APPLYING FOR UNEMPLOYMENT INSURANCE BENEFITS, MET ALL THE ELIGIBILITY REQUIREMENTS IMPOSED BY SECTION 1253(c) OF THE UNEMPLOYMENT INSURANCE CODE AND THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THE COURT OF APPEAL AND THE SUPREME COURT WITH REGARD TO FEDERAL PREEMPTION OF IMMIGRATION AND NATURALIZATION.

It will be recalled from the evidence that is without dispute, that the Petitioner when applying for benefits said he was willing and able to accept any suitable employment, and did not impose any restrictions with regard to hours or distances. Yet, the respondents and the Court of Appeal held that the Petitioner was unavailable for work, pursuant to Section 1253(c) of the Unemployment Insurance Code, because he refused to present documentary evidence as to his immigration status.

A. The Respondents Relied on Section 1253(c)

The respondents based their findings on Section 1253(c) of the Unemployment Insurance Code, which reads very simply:

> "An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that he was able to work and available for work that week."

Nowhere in Section 1253(c) or in the entire code section on eligibility requirements is there any mention of immigration status as a prerequisite to being available for work. "Availability for work" was discussed and the principles set out in Garcia v. California Employment Stabalization Commission, 161 P.2d 972, 71 Cal.App.2d 107. In that case the court stated that "availability for work" within the availability for suitable work which the claimant has no good cause for refusing. The Garcia case establishes a basic definition of "availability for work."

In arriving at its decision in the Garcia case, the Court cited the case of Hagadone v. Kirkpatrick, Idaho, 154 P.2d 181, in which the same question of "availability" is adjudicated and the same conclusion obtained.

In the matter of the People v. Nest, 53 Cal.App.2d 856, 128 P.2d 444 the court directs

its attention to the same question of "availability." The Court held:

> "We find there was no substantial evidence to support the trial court's implied finding that the defendant was not available for work where the claimant was physically able to work, was registered for work with the department of employment, and where he did not refuse an offer of suitable work."

In interpreting Garcia v. California Employment Stabalization Commission, 76 Cal. App.2d 231, 172 P.2d 938; People v. Nest, 53 Cal.App.2d 856, 128 P.2d 444; and Leow's, Inc. v. California Employment Stabalization Commission, 76 Cal.App.2d 231, 172 P.2d 938; it becomes apparent that "availability for work" connotes nothing more than a mental and emotional willingness to accept suitable employment. With this criteria as a basis, its apparent that the Petitioner has met the established definition of availability as set forth by the foregoing cases. There's no evidence in the record to suggest that the Petitioner was even remotely unavailable using this criterion.

It becomes increasingly apparent that the respondents have vastly departed from the established definition of available for work and the language and intent of the Code itself in determining that the Petitioner was unavailable for work. They have imposed a new requirement that neither logically nor legally belongs

within the context of available for work. Especially in view of the fact, that there is no existing valid law prohibiting the hiring of undocumented aliens.

B. Federal Preemption

Perhaps if Section 2805 of the Labor Code of California, enacted in 1971, were a valid law still in effect, the respondents' contentions would have some merit. That Section states:

> "No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on l awful resident workers."

Therefore immigration status would become a factor of employability as a matter of law. However, the California Court of Appeal has declared Code Section 2805 of the Labor Code of California as an invalid invasion of a federally preempted area in Dolores Canning Co. v. Howard, 40 Cal.App.3d 673 (115 Cal.Rptr. 453), and De Canas v. Bica, 40 Cal.App.3d 976 (115 Cal. Rptr. 444), hg. The current law of California is as stated in the case of Dolores Canning.

Therefore we are left with a situation where the employment of undocumented persons is not prohibited, and no evidence was presented by the respondents to show that employers are unwilling

to hire undocumented persons. Yet the Petitioner was erroneously classified as unavailable for work.

The Court of Appeal differenciates and points out that the plaintiffs in Dolores Canning and De Canas were citizens. This fact is superfluous in that the constititional subject matter is the same and the precedent established in those cases sets the criterion to be followed by government administrative agencies. Either the federal government has preempted the immigration field or it has not. To hold that its unconstitutional for some while not for others constitutes a selective unfairness which itself violates the 14th Amendment to the Constitution.

Furthermore, the respondents should not be permitted to rewrite Section 1253(c) for the purpose of imposing philosophies not intended nor stated by the legislature. The Petitioner feels that this is intellectually dishonest and that all the people of the State of California will suffer if their laws are subjected to ambiguous interpretations for the purpose of enforcing philosophies not mentioned in their statutes. In essence, this constitutes an assumption of power and is a dangerous precedent. In the People v. Nest, 53 Cal.App.2d 856, 128 P.2d 444, the Court held:

> "Words in a statute should be given their ordinary meaning and receive a sensible construction in accord with the commonly understood meaning thereof unless a different meaning is clearly intended."

Immigration status requirements as prerequisites within the meaning of Section 1253(c) are the proper subject of the legislative to act upon, federal preemption notwithstanding. To hold otherwise will effectively deprive the people of the State of California of a legislative voice on such matters and provide the respondents with an opportunity to circumvent the precedents established in Dolores Canning v. Howard, 40 Cal. App.3d 673 [115 Cal.Rptr. 435], and De Canas v. Bica, 40 Cal.App.3d 976 [115 Cal.Rptr. 444].

C. Respondents' Public Policy

Its apparent that the respondents and the majority decision of the Court of Appeal are promoting public policy as a justification for denying the Petitioner benefits. The judicial flaw in this type of reasoning is eloquently manifested in the dissenting opinion of Justice Thompson, which states in part:

> "To the extent that the public policy argument of the majority opinion is construed as application of a state public policy, it suffers from a vital constitutional flaw if Dolores Canning and De Canas are accepted as valid. Federal preemption applies just as much to judicial legislation by a state court as it does to law enacted by the legislative body of a state. If an area is federally preempted by the

constitution, a state public policy can no more justify a state decision resting on the local policy than can the same public policy justify a state legislative enactment."

To the extent that the public policy argument of the majority opinion is construed as a statement of federal public policy, it wrongly states it. The majority opinion rests upon a partial and consequently deceptive characterization of Public Law 283 of the 82nd Congress (2d Sess.) to state that there is a federal public policy against payment of unemployment insurance benefits to aliens not legally present in their country. Public Law 283 now incorporated in 8 U.S.C. Section 1324, subdivision (a), states in Section 8, subdivision (4) that it is a felony to wilfully or knowingly encourage or induce an alien illegally to enter the United States. But the same Section 8, subdivision (4) ends with the sentence:

> "Provided however, that for the purposes of this section, employment including the usual and normal practices incident to employment shall not be deemed to constitute harboring. Congress has, in terms that alley all doubt declared that the employment of the illegal alien and practices normally incident to the employment are not contrary to federal public policy or law. The federal public policy condones and does not condemn

> the employment. (Dolores Canning Co. v. Howard, 40 Cal.App.3d 673, 684; Cobos v. Mello-dy Ranch, 20 Cal. App.3d 947, 950-95 (98 Cal.Rptr.). In view of the condonation, I disagree with the majority's conclusion that the normally incidental practice of payment of unemployment insurance benefits when the alien's employment terminates is somehow contrary to federal public policy."

The only place in the Unemployment Insurance Code where public policy is mentioned is in Section 100. Section 100 sets a general guideline for the public policy to be implemented and followed by the respondents. Nowhere in the public policy directive of Section 100 is there any mention of immigration status. Section 100 declares that it is in the public good and welfare that funds be set aside and benefits be provided for persons unemployed through no fault of their own. This concept is also stated in Coast Parking Company v. California Department of Employment, 202 Cal.App.2d 733, 21 Cal.Rptr. 130 and Matson Terminals v. California Emp. Comm., 24 Cal.2d 695, 151 P.2d 202. Instead of attempting to disburse benefits to the Petitioner, the respondents have deprived him of benefits. In the words of Section 100, this deprivation is not in the public good. It appears that the respondents are circumventing existing California public policy in an attempt to implement some other type of policy. The Petitioner submits that the respondents should adhere to this statute.

Public policy may be a proper consideration in determining eligibility for benefits but in the words of the dissenting members of the Appeals Board, "that public policy should be expressed somewhere within the language of the Code itself."

In McCarthy v. City of Oakland, 60 Cal. App.2d 544, 141 P.2d 4 the Court expounds on the effect of public policy created by Statute:

> "Public policy is sometimes declared by judicial decision, but where a legislative body have jurisdiction over pension rights has enacted specific provisions on the subject, the public policy on that subject is established thereby."

The only objective the respondents can achieve by entering the field of Immigration and Naturalization is to enforce immigration laws by punishing claimants. As aforestated, this is a preempted area. This type of law of such a far reaching magnitude should not be created at the administrative policy level as it tends to subvert the existing statutory directive regarding the disbursement of benefits.

The mere fact that the respondents are disbursing benefits to aliens does not necessarily mean that the respondents are undermining or subverting immigration laws. Unemployment insurance benefits have nothing to do with immigration law but are a result of vesting economic

interests. See Stanley v. Unemployment Insurance Appeals Board, 6 Cal.App.3d 675, 86 Cal.Rptr. 294. In fact,in order for a claimant to qualify for benefits he has to establish a valid fund through past employments. In other words a claimant has to contribute his labor and services in order to qualify. Employers and our economy are benefitting through their labor. Are they not entitled to something in return? The respondents and the majority decision of the Court of Appeal promote the concept that undocumented aliens are unjustly unriched by our system in that they receive so much while giving little in return. However, this has not been proven to be the case. For example - a recent study conducted by the United Way in Los Angeles demonstrates that the undocumented aliens contribute far more in taxes than they receive in terms of services and assistance. (A copy of said report is attached to this Petition and by reference made a part hereof). The Petitioner requests that the Court take judicial notice of this report.

Another report prepared by the United States Labor Department further demonstrates that undocumented aliens give far more than they receive from our system. For example, that study indicates that only 1.3% of undocumented aliens received food stamps and 0.5% of them received welfare payments. While 44% of the undocumented aliens paid hospital insurance, only 27.4% used hospitals or clinics. These figures when compared to the substantial income tax, sales tax and property tax contribution by undocumented aliens, truly demonstrates that the these pwersons are not really being enriched at

the expense of our system but in essence are apparently being exploited themselves.

For the foregoing reasons it is respectfully urged that the Petitioner, was at all times available for work based on Section 1253(c) of the Unemployment Insurance Code and Public Policy.

II

THE RESPONDENTS AND COURT OF APPEAL ACTED UNCONSTITUTIONALLY IN SUSPENDING THE "EQUAL PROTECTION OF THE LAW" AND "DUE PROCESS" PROVISIONS OF THE CONSTITUTION IN DETERMINING PETITIONER'S CLAIM FOR BENEFITS

The respondent Appeals Board in its majority decision stated that the Petitioner was not entitled to "equal protection ofthe law" and "due process."

The claimant and Petitioner in this matter was at all time a legal resident. Then, how did the respondents arrive at the conclusion that the Petitioner was an illegal entrant? They did it by creating an artificial hypothesis based on Evidence Code Sections 412 and 413, that in as much as the Petitioner refused or failed to show documentary evidence

as to the legality of his presence in this country he must be an illegal entrant. It is a well established principle that aliens are entitled to equal protection of the law and due process.

See:

Yick Wo v. Hoplins,
118 U.S. 356, 30 L.Ed. 220,
65 Sup.Ct. 1064;

In re Kotta,
187 Cal. 27, 200 P. 957;

Takahashi v. Fish and Game Commission,
30 Cal.2d 719, 187 P.2d 805;

Section 261, Constitutional Law,
11 Cal. Jur. 2d, page 700.

The Petitioner contends that there is no basis for the suspension of due process and equal protection of the law in the Petitioner's matter for the purpose of determining that he was an undocumented alien. Sections 412 and 413 of the Evidence Code are not really in point and are not intended to be used as a final determining factor but as a mere guide.

Just merely making the bald assertion that the Petitioner is an illegal alien while not following the accepted procedures and constitutional standards of proof is of little constructive consequence. The respondents should first be required to uphold the constitution in making a

determination as to the legality of the petitioner's immigration status before concluding that he is an illegal alien. To do otherwise subverts the constitution and high standards of jurisprudence established in our country over the years.

In matters pertaining to illegal and deportable aliens inside the United States, the burden of proof is on the government to prove illegality.

See:

Palmer v. Ultimo,
69 F.2d 1 (7th Cir.);

Gastelum-Quinones v. Kennedy,
374 U.S. 469, 83 S.Ct. 1819;

De Lucia v. Flagg,
297 F.2d 58, 7th Cir., cert. den.
369 U.S. 837.

The respondents should have to meet this same burden of proof. The respondents have not presented any evidence to meet this burden of proof but, instead have attempted to shift the burden of proof. This, itself, is a violation of due process and equal protection of the law.

The respondents have violated due process and equal protection of the law in determining Petitioner's eligibility for benefits.

A. The Actions of the Respondents Department of Human Resources Development in Requiring Only a Certain Segment of California Applicants for Unemployment Insurance Benefits, as a Prerequisite for Such Benefits, to Present Documentary Evidence to Prove the Legality of Their Presence in This Country, While Not Requiring Others to Do So Is Unconstitutional.

The respondents have been violative of Fourteenth Amendment to the Constitution from the inception. The law is well established that aliens are entitled to equal protection of the law.

See:

Yick Wo v. Hopkins,
118 U.S. 356, 30 L.Ed. 220,
6 S.Ct. 1064;

In re Kotta,
187 Cal. 27, 200 P. 957;

Takahashi v. Fish and Game Commission,
30 Cal.2d 719, 185 P.2d 805;

Section 261, Constitutional Law,
11 Cal. Jur. 2d, page 700.

When a legal resident alien applies for unemployment insurance benefits, he is immediately asked by the respondents to present documentation to prove the legality of his presence in the United States. However, when a claimant claims to be a citizen, he is not asked to present a birth certificate or any documentary evidence and is not required to make any proof as to the legality of his presence in the United States. Therein lies the inequality and unfairness. Either everyone should have to prove, by documentary evidence, the legality of their presence in the United States or nobody should be so required. By singling out a certain segment of Californians and treating them differently, the respondents have effectively denied them equal protection of the law.

See: In re Kotta, 187 Cal. 27, 200 P. 957 in which the Supreme Court of California held the following:

> "Laws placing a higher burden on only a portion of similarly situated persons denies to such portion the equal protection of the laws."

The Court also held that the,

> "Word person within equal protection of laws includes aliens."

CONCLUSION

In conclusion it is respectfully urged that the Petitioner was unemployed through no fault of his own and no evidence was presented to suggest that the Petitioner imposed any restrictions with regard to employment. The Petitioner demonstrated a mental and emotional willingness to accept employment. This combined with the fact that there is no law in effect prohibiting the employment of undocumented aliens clearly indicate that the Petitioner was available for work pursuant to Section 1253(c) of the Unemployment Insurance Code.

With regard to public policy being a consideration in determining eligibility for unemployment insurance benefits, any policy involving immigration status is an intervention into a federally preempted area and a misstatement of federal public policy. The Petitioner contends that all policies should be implemented in light of Section 100 of the Unemployment Insurance Code, as this is where the legislative has provided the direction for the disbursement of benefits.

Furthermore, the respondents have created requirements that go beyond the language and authority granted by statutes. If this kind of a precedent is allowed, it would make the law ambiguous. The Petitioner recognizes the importance of the respondents' duties. But the respondents should not implement policies

at the expense of existing statutes, the traditional tri-separation of powers and principles of constitutional law, "For ours is still a country of laws and not men."

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Supreme Court and Court of Appeal for the Second Appellate District of California.

Respectfully submitted,

MANUEL LOPEZ

Attorney for Petitioner

APPENDIX A

2nd Civil No. 44695

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

ALONSO

v.

THE STATE OF CALIFORNIA ET AL.

SUPREME COURT
FILED
SEP 24 1975
G. E. BISHEL, Clerk

Deputy

Application for relief from default is granted.

The petition for hearing is denied.

I, G. E. Bishel, Clerk of the Supreme Court of the State of California, hereby certify that the above is a true copy of an order of said Court, as the same appears of record in my office.

Witness my hand and the seal of the Court this 19th day of Dec A.D. 1975

Clerk

By Deputy Clerk

TOBRINER, J

Acting Chief Justice